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I, Elaine Willig, hereby certify that the below identified correspondence is being facsimile transmitted to the United States Patent and Trademark Office on July 8, 2005.

Signature: Elaine Willig

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1. Response to Restriction Requirement (2 pages)

Application No.: 10/707,236

Filed: November 29, 2003

Inventor: Di Orio et al.

Attorney Docket No.: OTO-001

COMMENTS:

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Attorney Docket No. OTO-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Susan C. DI ORIO et al. : Confirmation No. 1235
Serial No.: 10/707,236 : Group Art Unit 3764
Filed: November 29, 2003 : Examiner: RICHMAN, Glenn
DEVICE AND KIT FOR BODY STRETCHING

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The primary examiner issued a restriction requirement on June 10, 2005, restricting the claims into two inventions: Group 1, claim 1-8, drawn to a stretching device, and Group II, drawn to a kit comprising the stretching device.

Restriction Requirement

Applicants have provisionally elected with traverse to prosecute the invention of Group I, claims 1-8, drawn to a stretching apparatus. Claims 9-12 are withdrawn.

The examiner states that the Inventions I (the stretching apparatus) and II (the kit containing the stretching apparatus and instructions) are distinct. Applicants first wish to clarify that the stretching apparatus is the sub-combination and the kit is the combination.

The examiner states that the inventions are distinct because "the combination as claimed does not require the particulars of the subcombination as claimed because instructions are not required. The subcombination has separate utility as a stretching device".

The examiner also concludes that the inventions have acquired separate status in the art as shown by their different classification.

The Applicants respectfully traverse the restriction requirement.

Application No. 10/707,236
Amendment date 07/05
Reply to Office Action of 06/10/05

The examiner's classification of the kit invention under 434/247 "physical education, education and demonstration" is perhaps appropriate as a classification for searching purposes only. Applicants however do not agree that it is a proper classification of the kit invention - the kit is a stretching kit, with instructions for use. It is not a training kit, per se. Further, Applicants claims do not include training or instruction steps in a detail. Therefore, Applicants contend that the two inventions are not distinct, since they do not have a separate status in the art.

Applicants also traverse the restriction requirement because the sub-combination (the stretching apparatus) does not have utility in any other combination, that Applicants are aware, other than in the stretching kit combination. Since this leg of the two-prong requirement of MPEP 806.05(c) for distinctiveness is missing, the inventions can not be distinct, and the restriction requirement should be withdrawn.

Conclusion

Applicants request withdrawal of the restriction requirement with respect to the invention of claims 9-12, and a prompt allowance of all claims.

Respectfully submitted,

For: S.C. DiOrio et al.

By 

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July 8, 2005